

AMENDED IN ASSEMBLY MARCH 19, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1680

Introduced by Assembly Member Wieckowski

February 14, 2012

An act to amend Sections 1300 and 1301 of the Corporations Code, relating to dissenting shareholders' rights.

LEGISLATIVE COUNSEL'S DIGEST

AB 1680, as amended, Wieckowski. Dissenting shareholders' rights.

Existing law, the General Corporation Law, provides for the formation and governance of general corporations, including the rights of shareholders of a corporation who dissent from approving a reorganization or short-form merger. Existing law provides that a holder of dissenting shares, as defined, who complies with certain procedures under specified circumstances is entitled to receive from the corporation the fair market value of the holder's shares, as defined, determined as of the day before the first announcement of the terms of the transaction. Existing law provides that holders of publicly traded shares are only eligible to receive the fair market value of their shares if demands for payment are filed with respect to 5% or more of the class of shares.

This bill would provide that the fair market value *of dissenting shares that are traded on a national securities exchange certified by the Commissioner of Corporations* shall be the most recent closing price per share prior to the first announcement of the terms of the *proposed* transaction, *subject to adjustment as specified*. The bill would eliminate the provision making holders of publicly traded shares only eligible to receive the fair market value of their dissenting shares if 5% or more

of the shares are dissenting shares. The bill would make conforming changes.

This bill would provide that the fair market value of dissenting shares that are not publicly traded shall be determined as of the day before the first announcement of the terms of the proposed transaction, subject to adjustment, as specified. The bill would redefine “dissenting shares” to exclude shares for which the holder is entitled only to publicly traded shares of another corporation or cash in lieu of fractional shares, or a combination of those shares and that cash.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1300 of the Corporations Code is
2 amended to read:

3 1300. (a) If the approval of the outstanding shares (Section
4 152) of a corporation is required for a reorganization under
5 subdivisions (a) and (b) or subdivision (e) or (f) of Section 1201,
6 each shareholder of the corporation entitled to vote on the
7 transaction and each shareholder of a subsidiary corporation in a
8 short-form merger may, by complying with this chapter, require
9 the corporation in which the shareholder holds shares to purchase
10 for cash at their fair market value the shares owned by the
11 shareholder which are dissenting shares as defined in subdivision
12 (b). The fair market value shall be ~~the most recent closing price~~
13 ~~per share prior to the first announcement of the terms of the~~
14 ~~proposed reorganization or short-form merger, excluding any~~
15 ~~appreciation or depreciation in consequence of the proposed action,~~
16 ~~but adjusted for any stock split, reverse stock split, or share~~
17 ~~dividend which becomes effective thereafter.~~ *determined as*
18 *follows:*

19 *(1) For shares listed on any national securities exchange*
20 *certified by the commissioner under subdivision (o) of Section*
21 *25100, the fair market value shall be the most recent closing price*
22 *per share (as quoted on the applicable national securities*
23 *exchange) prior to the first announcement of the terms of the*
24 *proposed reorganization or short-form merger, as adjusted for*
25 *any stock split, reverse stock split, or share dividend that becomes*
26 *effective thereafter.*

1 (2) *For any shares not described in paragraph (1), the fair*
2 *market value shall be determined as of the day before the first*
3 *announcement of the terms of the proposed reorganization or*
4 *short-form merger, excluding any appreciation or depreciation in*
5 *consequence of the proposed reorganization or short-form merger,*
6 *as adjusted for any stock split, reverse stock split, or share dividend*
7 *that becomes effective thereafter.*

8 (b) As used in this chapter, “dissenting shares” means shares
9 ~~that come within to which all of the following descriptions apply:~~

10 ~~(1) That were not immediately prior to the reorganization or~~
11 ~~short-form merger listed on any national securities exchange~~
12 ~~certified by the Commissioner of Corporations under subdivision~~
13 ~~(c) of Section 25100, and~~

14 (1) *That, with respect to those shares, the notice of meeting of*
15 *shareholders to act upon the reorganization summarizes this section*
16 *and Sections 1301, 1302, 1303 and 1304; provided, however, that*
17 *this provision does shall not apply to any shares with respect to*
18 *which there exists any restriction on transfer imposed by the*
19 *corporation or by any law or regulation.*

20 (2) *That were outstanding on the date for the determination of*
21 *shareholders entitled to vote on the reorganization and (A) were*
22 *not voted in favor of the reorganization or, (B) if described in*
23 *paragraph (1), were voted against the reorganization, or were held*
24 *of record on the effective date of a short-form merger; provided,*
25 *however, that subparagraph (A) rather than subparagraph (B) of*
26 *this paragraph applies in any case where the approval required by*
27 *Section 1201 is sought by written consent rather than at a meeting.*

28 (3) *That the dissenting shareholder has demanded that the*
29 *corporation purchase at their fair market value, in accordance with*
30 *Section 1301.*

31 (4) *That the dissenting shareholder has submitted for*
32 *endorsement, in accordance with Section 1302.*

33 (c) As used in this chapter, “dissenting shareholder” means the
34 recordholder of dissenting shares and includes a transferee of
35 record.

36 (d) *Dissenting shares do not include any shares with respect to*
37 *which the holder is required, by the terms of the reorganization*
38 *or short-form merger agreement, to accept for the shares the*
39 *following forms of consideration:*

1 (1) *Shares of any other corporation the shares of which, at the*
2 *effective time of the reorganization or short-form merger, are listed*
3 *on any national securities exchange certified by the commissioner*
4 *under subdivision (o) of Section 25100.*

5 (2) *Cash in lieu of fractional shares described in paragraph*
6 *(1).*

7 (3) *Any combination of the shares or cash in lieu of fractional*
8 *shares described in paragraphs (1) or (2).*

9 SEC. 2. Section 1301 of the Corporations Code is amended to
10 read:

11 1301. (a) If, in the case of a reorganization, any shareholders
12 of a corporation have a right under Section 1300, subject to
13 compliance with paragraphs (3) and (4) of subdivision (b) thereof,
14 to require the corporation to purchase their shares for cash, that
15 corporation shall mail to each of those shareholders a notice of the
16 approval of the reorganization by its outstanding shares (Section
17 152) within 10 days after the date of that approval, accompanied
18 by a copy of Sections 1300, 1302, 1303, and 1304 and this section,
19 a statement of the price determined by the corporation to represent
20 the fair market value of the dissenting shares, and a brief
21 description of the procedure to be followed if the shareholder
22 desires to exercise the shareholder's right under those sections.
23 The statement of price constitutes an offer by the corporation to
24 purchase at the price stated any dissenting shares as defined in
25 subdivision (b) of Section 1300, unless they lose their status as
26 dissenting shares under Section 1309.

27 (b) Any shareholder who has a right to require the corporation
28 to purchase the shareholder's shares for cash under Section 1300,
29 subject to compliance with paragraphs (3) and (4) of subdivision
30 (b) thereof, and who desires the corporation to purchase shares
31 shall make written demand upon the corporation for the purchase
32 of those shares and payment to the shareholder in cash of their fair
33 market value. The demand is not effective for any purpose unless
34 it is received by the corporation or any transfer agent thereof (1)
35 in the case of shares described in subdivision (b) of Section 1300,
36 not later than the date of the shareholders' meeting to vote upon
37 the reorganization, or (2) in any other case within 30 days after
38 the date on which the notice of the approval by the outstanding
39 shares pursuant to subdivision (a) or the filing pursuant to
40 subdivision (i) of Section 1110 was mailed to the shareholder.

- 1 (c) The demand shall state the number and class of the shares
- 2 held of record by the shareholder which the shareholder demands
- 3 that the corporation purchase at the fair market value of those
- 4 shares as determined pursuant to subdivision (a) of Section 1300.

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